

## UNITED STATES DISTRICT COURT

for the  
District of ArizonaDWA  
10/2/12  
United States of America )

v. )

Rosario Rafael Burboa-Alvarez, ) Case No. 12-438M  
A 098 429 739 )Defendant )

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about October 2, 2012, in the County of Maricopa, in the District of Arizona, the defendant violated Title 8, U.S.C. § 1326(a), an offense described as follows:

Rosario Rafael Burboa-Alvarez, an alien, was found in the United States of America, at or near Phoenix, in the District of Arizona, after having been previously denied admission, excluded, deported, and removed from the United States, at or near Nogales, Arizona, on or about April 28, 2009, and not having obtained the express consent of the Secretary of the Department of Homeland Security to reapply for admission thereto; in violation of Title 8, United States Code, Sections 1326(a), and enhanced by (b)(1).

I further state that I am a Border Patrol Agent with U.S. Customs and Border Protection.

This criminal complaint is based on these facts:

**See Attached Statement of Probable Cause Incorporated By Reference Herein**

REVIEWED BY: E. Whiffen, P.S. for AUSA Jane E. McLaughlin

☒ Continued on the attached sheet.

*Complainant's signature*Michael Van Wagenen,  
U.S. Border Patrol Agent*Printed name and title*

Sworn to before me and signed in my presence.

Date: October 4, 2012

*Judge's signature*

City and state: Phoenix, Arizona

Michelle H. Burns,  
United States Magistrate Judge*Printed name and title*


### **STATEMENT OF PROBABLE CAUSE**

I, Michael Van Wagenen, being duly sworn, hereby depose and state as follows:

1. Your affiant is a United States Border Patrol Agent. I have learned from direct participation in the investigation and from the reports and communications of other agents and officers the facts recited herein.
2. On October 2, 2012, at approximately 7:30 a.m., Agents from the Tucson Sector DISRUPT Rip Crew Task Force encountered an individual during surveillance on a target of a "rip crew", an organization that conducts armed robberies on narcotics smugglers.
3. Border Patrol Agent C. Norris identified herself as a Border Patrol Agent and conducted an immigration inspection on the subject, who was later identified as Rosario Rafael Burboa-Alvarez. Rosario Rafael Burboa-Alvarez, admitted to being a citizen and national of a country other than the United States, unlawfully present in the United States. Burboa-Alvarez was transported to the Casa Grande Border Patrol Station for further processing. Burboa-Alvarez was held in administrative custody until his immigration records could be obtained and his identity and criminal history could be confirmed.

4. Immigration history checks revealed Rosario Rafael Burboa-Alvarez to be a citizen and national of Mexico and a previously deported alien. Burboa-Alvarez was removed from the United States to Mexico through Nogales, Arizona, on or about April 28, 2009, pursuant to a reinstatement of a removal order issued by an immigration judge. There is no record of Rosario Rafael Burboa-Alvarez in any Department of Homeland Security database to suggest that Burboa-Alvarez obtained permission from the Secretary of the Department of Homeland Security to return to the United States after his removal. Rosario Rafael Burboa-Alvarez's immigration history was matched to him by electronic fingerprint comparison.
5. Criminal history checks revealed that Rosario Rafael Burboa-Alvarez was convicted of Attempted Possession of Marijuana for Sale, a felony offense, on April 21, 2008, in the Superior Court of Arizona, Maricopa. Burboa-Alvarez was sentenced to three (3) years incarceration. Burboa-Alvarez's criminal history was matched to him by electronic fingerprint comparison.
6. On October 2, 2012, Rosario Rafael Burboa-Alvarez was advised of his constitutional rights. Burboa-Alvarez freely and willingly acknowledged his rights and did not wish to provide a sworn statement.

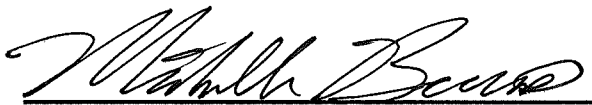
7. For these reasons, this affiant submits that there is probable cause to believe that on or about October 2, 2012, Rosario Rafael Burboa-Alvarez, an alien, was found in the United States of America, at or near Phoenix, in the District of Arizona, after having been previously denied admission, excluded, deported, and removed from the United States at or near Nogales, Arizona, on or about April 28, 2009, and not having obtained the express consent of the Secretary of the Department of Homeland Security to reapply for admission thereto; in violation of Title 8, United States Code, Sections 1326(a), and enhanced by (b)(1).



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Michael Van Wagenen  
U.S. Border Patrol Agent

Sworn to and subscribed before me  
this 4<sup>th</sup> day of October, 2012.



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Michelle H. Burns  
United States Magistrate Judge